



ML Strategies Update

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ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, DC 20004 USA
202 296 3622
www.mlstrategies.com

JULY 7, 2015

JULY CONGRESSIONAL AGENDA

After a weekend of fireworks, parades, and apple pie, Congress returns from the Independence Day recess this week with the Senate scheduled to be in session for five weeks and the House of Representatives in session for four weeks before departing for the August recess.

June proved to be a productive month legislatively, with Congress giving final approval to several trade-related measures, including a bill to extend the African Growth and Opportunity Act, the Generalized System of Preferences, and the preferential duty treatment program for Haiti; a bill to extend the Trade Adjustment Assistance Program; and, most notably, a bill granting the president Trade Promotion Authority. Congress also approved the USA Freedom Act, which ended the bulk collection of U.S. citizens' phone data by the National Security Agency.

Halfway through the calendar year, there remain several significant legislative measures that could see final action during July, with work proceeding this month on other measures that will see passage later in the year.

While this update addresses legislative proposals separately, ML Strategies' view is that the most likely scenario is some large legislative vehicles moving at the end of the year, including perhaps a large appropriations deal that addresses future spending, as well as a package that could include an increase in the debt limit, a highway bill, and a tax extenders bill. What we do not see happening this year, or next for that matter, is any major tax reform measure or comprehensive immigration reform. Nor do we anticipate that there will be any serious progress on repealing the Affordable Care Act (ACA), Dodd-Frank, or the President's climate change agenda. However, the big end-of-year packages could include some modest measures such as fixes to the ACA, territorial tax reform, delay of the Administration's proposed ozone rule, and others.

Fiscal Year 2016 Appropriations

With the next fiscal year starting on October 1st, the House has already approved six of the twelve annual spending bills, and all but one of the remaining six have been reported out

of the Appropriations Committee and await floor action; there are likely to be at least several this month. This week, the full House is expected to continue consideration of the Department of Interior, Environment, and Related Agencies Appropriations Act.

In the Senate the outlook is less clear, as work on appropriations has stalled with Democrats blocking action in an effort to influence the larger debate over spending levels for domestic and defense priorities by providing sequestration relief. Any agreement on sequestration is not likely to happen until sometime in November, well after the start of the next fiscal year, setting up a likely need for a Continuing Resolution (CR) by September 30th. Without an agreement or a CR, we could see another government shutdown.

Still unclear is how – or even if – reconciliation will be used in the budgetary process. Congressional Republicans have long eyed using the reconciliation process to repeal Obamacare, but there are obstacles to its use for this purpose, including the recent Congressional Budget Office (CBO) score that showed it to be a budget buster.

Highway Bill

Just days before the May 31st expiration of authority for the Highway Trust Fund (HTF) Congress approved a two-month short-term extension of funding the HTF running through July 31st. While this avoided an immediate challenge, it has made the next step in HTF reauthorization more complicated since the Fund is set to run out around the same time as the new July 31st expiration, meaning the Congress will have to identify funding offsets for a long-term bill that have thus far been the subject of much debate with little agreement.

The Senate Environment and Public Works Committee, last month, approved a six-year \$350 billion highway bill, the Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act. Other committees of jurisdiction for the highway bill must also schedule mark-ups for their portions of the legislation, including the most important Senate Finance Committee, which has jurisdiction over the revenue raising aspects of the bill.

In the House of Representatives, a bipartisan group of Members has introduced the Bridge to Sustainable Infrastructure Act, which now has 32 cosponsors. The Bridge Act calls for indexing federal gasoline and diesel fuel taxes to inflation in order to generate \$27.5 billion for highway infrastructure projects over a two-year period. However, Transportation Committee Chairman Bill Shuster (R-PA) has stated his objection to increasing the fuel tax to pay for highway projects, indicating instead that his preferred solution is through repatriation of overseas earnings.

With much work remaining on the highway bill, look for another short-term extension through the end of the calendar year, or even perhaps only until the end of the current fiscal year on September 30th.

Export-Import Bank Reauthorization

The Export-Import Bank's authorization expired on June 30th despite an aggressive campaign by the business community to see it reauthorized. Without an authorization, the Bank cannot undertake any new projects; however, it is funded through the end of the current fiscal year on September 30th and will continue to work on existing projects, while congressional supporters will work to retroactively authorize the Bank. That reauthorization could come in the form of an amendment to a highway bill this month. If not, the reauthorization process could play out until later this year.

Customs Reauthorization

The Trade Facilitation and Enforcement Act reauthorizes activities of U.S. Customs and Border Protection and also includes provisions to modernize the customs process, including language that would increase the U.S. de minimis duty threshold for low-value imports and provisions related to intellectual property protection. The bill was taken up during consideration of other trade measures last month and has been passed by the House of Representatives and Senate, but needs to be conferenced to reconcile differences. The House is likely to vote on a Motion to Go to Conference on the bill this week. If the Motion is approved, the House will appoint conferees. The Senate has already appointed Senators Hatch (R-UT), Cornyn (R-TX), Thune (R-SD), Wyden (D-OR), Schumer (D-NY), and Stabenow (D-MI) as conferees.

National Defense Authorization Act (NDAA)

Upon their return this week, the leadership of the House and Senate Armed Services Committees are scheduled to participate in closed negotiations aimed at addressing the differences between the House- and Senate-passed NDAA's. The House has already named its conferees and the Senate is expected to do so early this week. The conference committee must resolve controversial policy provisions related to the Guantanamo Bay detention facility, acquisition reform, military pay and benefits, and the Pentagon's use of Russian-made rocket engines. While the goal is to get a final bill to the President's desk before the August recess, it is possible that, once again, the FY16 NDAA may not be signed into law until the end of this year. Even if Congress approves a conference bill this work period, the White House has committed to vetoing the NDAA if it authorizes the additional \$38 billion in Overseas Contingency Operations (OCO) funding until there is also sequestration relief for non-defense programs.

Toxic Substances Control Act (TSCA) Reform

The House passed late last month a bipartisan Toxic Substances Control Act reform bill by a 398-1 vote, bringing Congress closer to a bicameral deal that would reshape decades-old rules for the Environmental Protection Agency to evaluate new chemicals. A wider-ranging bipartisan Senate counterpart measure, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, has amassed significant support in recent weeks but remains without a firm commitment to floor time from Majority Leader Mitch McConnell, though it is likely to receive floor time before the August recess. The measure also faces resistance from Senate Environment and Public Works Committee Ranking Member Barbara Boxer (D-CA), who, though encouraged by the House legislation's momentum, prefers her alternative measure, the Alan Reinstein and Trevor Schaefer Toxic Chemical Protection Act, which takes a different approach than the Lautenberg bill on state preemption among other things.

Telecommunications

Spectrum is a high policy priority between now and the August recess, both on Capitol Hill and at the Federal Communications Commission (FCC). The Senate Commerce Committee is planning a hearing on July 7th to examine intelligent transportation technologies. This hearing is part of an ongoing effort to balance stakeholder interests in both the transportation and telecommunications industries related to unlicensed spectrum. On the House side, the Energy & Commerce Committee has also been examining this issue, beginning with a briefing from Department of Transportation, FCC, and National Telecommunications and Information Administration (NTIA) in May and continuing with a hearing on vehicle-to-vehicle technology in June.

On July 16th the FCC is expected to vote on rules and procedures for the incentive auction that is scheduled for the first quarter of 2016. There has been a flurry of activity on Capitol Hill and at the FCC regarding competition issues in the incentive auction, which the Commission will likely address at the July Open Meeting. In addition, the FCC is expected to issue a decision in the proposed merger of AT&T and DirecTV this month.

Energy Legislation

Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) are in the midst of negotiations over which of the 114 proposed energy measures, as well as any other potential language, will be included in their broad bipartisan energy package. Senator Murkowski intends to have the four-title bill fully drafted before the August recess, and Senator Cantwell is releasing with her Democratic Committee colleagues soon a broad energy bill to emphasize the caucus's priorities. The legislation will focus on clean energy, energy efficiency, and modernization of the U.S. electricity grid. In the meantime, bipartisan negotiations between Senators Murkowski and Cantwell, as well as their staffs continue to progress well, they hope to mark-up and report out the bipartisan legislation before the August recess, potentially on a title-by-title basis.

The House Energy and Commerce Committee will soon release broad energy legislation as well. The committee will mark-up the measure as early as next week, with the hope to have it on the floor before the August recess. Committee Chair Fred Upton (R-MI) had initially planned to release the measure earlier, but needed more time to work out language to build bipartisan support.

Elementary and Secondary Education Act (ESEA)

In April, the Senate Health, Education, Labor, and Pensions Committee unanimously approved the ESEA reauthorization bill, the Every Child Achieves Act, which was introduced by Senate HELP Committee Chair Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) as a means to modernize the previous reauthorization of ESEA, the No Child Left Behind Act. The ESEA reauthorization is scheduled to be on the Senate floor this week. The House version of ESEA reauthorization, the Student Success Act, was reported out of the House Education and the Workforce Committee in February and sent to the House floor. It is on the House calendar for floor consideration later this week. While final passage may not occur in July, having the reauthorization on both the House and Senate floor the same week bodes well for the bill's future.

Health Care Legislation

With King v. Burwell behind us, Congress has an opportunity to shift focus to a number of additional health care priorities, the most immediate of which is an upcoming House vote on the 21st Century Cures Act. In advance of a floor vote expected this week, the House Rules Committee released a new version of the 21st Century Cures legislation which included additional language on offsets and interoperability.

Other possible action items in the wake of the SCOTUS decision is action on the package of House-passed Medicare Advantage bills in the Senate—H.R. 2505, the Medicare Advantage Coverage Transparency Act; H.R. 2507, the Increasing Regulatory Fairness Act; H.R. 2582, the Seniors' Health Care Plan Protection Act; and H.R. 2570, the Strengthening Medicare Advantage through Innovation and Transparency for Seniors Act—and passage of the twelve bipartisan, noncontroversial health bills, which the Senate Finance Committee approved at the end of June. Additional standalone opportunities, such as telehealth reimbursement and the Sensible Oversight for Technology which Advances

Regulatory Efficiency (SOFTWARE) Act—which were ultimately not included in the 21st Century Cures Act—may also be items of bipartisan agreement.

Looking farther down the road, Congressional analysts widely expect some GOP lawmakers to continue to tout their own ACA replacement bills in order to promote conservative-backed health reform ideas in place of the ACA. Although Presidential politics will certainly be a factor in determining the Republican agenda on Capitol Hill, there has been a significant amount of bipartisan activity around certain ACA “fixes” that could end up on the President’s desk as either standalone bills or as part of larger legislation, such as appropriations measures. Such “fixes” could include amending the ACA’s definition of full- vs. part-time work; a delay of the small group market expansion; and repeals of the medical device and Cadillac taxes, among other possible changes.

Data Breach & Cybersecurity

The Office of Personnel Management (OPM) breach is at the forefront of cybersecurity concerns this month. The House Science Committee is holding a hearing on the issue on July 8th, with witnesses from the Government Accountability Office, National Institute of Standards and Technology, National Active and Retired Federal Employee Association, and OPM. On the Senate side, the Judiciary Committee is focusing on cybercrime with hearings on encryption technology and cyber legal framework. In addition, the Cybersecurity Information Sharing Act (CISA) of 2015, which was approved by the Senate Intelligence Committee, may be considered on the Senate floor in this work period. If CISA comes to the floor this work period, the Senate may debate the addition of language to address data breach notification (DBN).

Tax Reform

The Senate Finance Committee will continue the work of its tax reform working groups, although the recommendations of the working groups are not going to be made public. The working groups had been tasked with making their recommendations before the end of May, but committee Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) extended the deadline until the end of June, and then again extended the deadline until after the 4th of July recess. The working groups are focused on individual taxes, business taxes, savings and investment, infrastructure and international issues. In the House, Ways and Means Committee Chairman Paul Ryan (R-WI), recently stated that other issues had taken up much of the committee’s time, but the committee is still focused on tax reform.

Patent Reform

In the first six months of the current congress, patent reform legislation has been introduced in the House and Senate but has faced concerns raised by tech companies, universities, and the pharmaceutical industry. Last month, the Senate Judiciary Committee approved its patent reform bill, the Protecting American Talent and Entrepreneurship Act (the PATENT Act) by a 16-4 vote, with committee leaders saying that they will continue to address concerns about the legislation as it heads to the Senate floor. In the House, the Judiciary Committee approved its patent reform legislation, the Innovation Act, last month by a 24-8 vote.

Dodd-Frank Reform

Despite the White House having indicated that the president would veto any legislation to change the Dodd-Frank Wall Street reform legislation, last month the Senate Banking

Committee approved, along a straight party line vote, the Financial Regulatory Improvement Act, introduced by Chairman Richard Shelby (R-AL). The legislation faces a steep challenge on the Senate floor where 60 votes would be needed for the legislation to advance. However, Chairman Shelby has indicated that he intends to push ahead in efforts to modify the Dodd-Frank legislation. Last month, Democratic members of the Senate Banking Committee and House Financial Services Committee, joined together to introduce their own, less sweeping, Dodd-Frank reform legislation. The bill, known as the Community Lender Regulatory Relief and Consumer Protection Act, is said to have the unanimous support of all Democratic members of both committees and is intended to offer a more modest “tweaking” of the Dodd-Frank law.

LOOKING AHEAD

Congress will return from the August recess to face September 30th deadlines for the Child Nutrition & Women Infants and Children (WIC) programs authorization, the Federal Aviation Administration authorization, the Internet tax moratorium, the EB-5 Visa Regional Center Program, and the end of the current fiscal year.

In the waning days of the previous Congress last December, Congress approved an extension of dozens of temporary tax provisions that had expired at the end of 2013. The extension only lasted through the end of 2014 – a short two weeks after passage of the legislation – so that taxpayers could claim them when filing their 2014 taxes. Looking ahead, the coming months could see these tax extenders addressed in any tax reform measure that advances or, more likely, as part of some omnibus bill or must-pass legislation (e.g. the highway bill or debt limit increase) at the end of the year.

Finally, while the exact date is uncertain, at some point later this year the Treasury Department’s ability to use “extraordinary measures” for addressing the federal government’s debt ceiling will have run its course. Without action by Congress to address the debt ceiling, default becomes a possibility.

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